

REMARKS

Claims 1 through 32 continue to be in the case.

The Office action refers to Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-7 and 27-29, drawn to medical treatment apparatus with an ultrasound generator hand piece with sonotrode and a suction element, classified in class 604, subclass 20.
- II. Claims 18-26, drawn to medical treatment apparatus with an ultrasound generator hand piece with sonotrode and flushing line and container, classified in class 604, subclass 22.

Applicants respectfully traverse. Applicants believe that he should be entitled to select from all claims 1 to 32 under consideration, and that the election process should not be limited to claims 1 to 7 and 18 to 29. Applicants respectfully submit that he should also be in a position to elect claims 8 to 17 and/or 30 to 32. Reconsideration of the restriction requirement is respectfully requested.

Inventions I and II related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombinations of Group I and II have separate utility such as the device (II) can be used to administer medical treatment along with a medical solution or the device (I) can be used to administer medical treatment and remove excess fluids or gases from the treatment site via the suction means, these activities have separate utility and have separate status in the art. See MPEP § 806.05(d).

Applicants respectfully disagree. The Office Action states: "subcombinations of Group I and II have separate utility such as the device (II) can be used to administer medical treatment along with a medical solution or the device (I) can be used to administer medical treatment and remove excess fluids or gases from the treatment site via the suction means,". Applicants note that device (II) administers a medical solution and that device (I) removes excess fluids. Applicants urge that the administration of liquids and the removal of liquids are closely related and should be examined together.

The examiner has required restriction between subcombinations usable together. Where applicant elects a subcombination and claims thereto are

subsequently found allowable, any claim(s) depending from or otherwise requiring all the limitations of the allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a). Applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application

Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

Applicants respectfully traverse. Applicants respectfully submit that the administration of liquids and the removal of liquids are so closely related that they should be examined together.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

Applicants select group (I) with claims 1 to 7 and 27 to 29 for initial examination.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

The election of an invention as required here is respectfully traversed as the liquid transport common to the alleged inventions is a common basis of all claims..

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention

Applicants urge that no prior art has been presented as of now and that a rejection of one species of the invention should not preclude patentability of another species of the invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

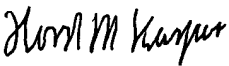
Applicants believe that no change in inventorship is appropriate in view of the restriction requirement.

Reconsideration of all outstanding rejections is respectfully requested.

All claims presently submitted are deemed to be in allowable form and a Notice of Allowance is earnestly solicited.

Respectfully submitted,

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